



FreeTV
Australia

Submission by Free TV Australia

Competitive Neutrality Inquiry

June 2018

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1 Executive Summary

Free TV Australia (Free TV) respects and supports vibrant national broadcasters that have sufficient funding to fulfil their important and distinctive roles in Australia's media landscape.

The existing charters of both the ABC and SBS remain highly relevant and appropriately capture the distinctive principal functions of each broadcaster. In particular, the SBS charter clearly establishes its principal function to provide multilingual and multicultural radio, television and digital services, to inform, educate and entertain all Australians and in doing so, reflect Australia's multicultural society.

While SBS Radio provides a world class service that delivers strongly for its constituency, the increasing focus of SBS TV (including SBS On Demand) in pursuing commercial outcomes has driven its programming scheduling away from its statutory functions. Accordingly, this submission focuses on the activities of SBS TV, which in recent years has noticeably departed from its core constituency and delivery of charter-aligned content. These practices have been evident both on-screen, and in commercial negotiations for content in which there has been an increasing, and pronounced SBS presence in acquisitions for international, particularly US content.

Free TV commissioned independent analysis of the top 50 programs on SBS One, VICELAND and Food Network from 2017. The research undertaken by respected media law academic and former ABC executive, Dr Murray Green, concluded that of the top 50 programs on each channel:

- SBS One – 52% were not charter aligned;
- SBS VICELAND – 58% were not charter aligned; and
- SBS Food Network – 66% were not charter aligned.

While the SBS Act does allow subsidiary functions, these must be incidental and the SBS Board must ensure that these minor accompaniments do not impact on the delivery of the principal function. Clearly, the current commercial focus of SBS is several orders of magnitude beyond what could be considered "incidental". SBS is now competing against the existing commercial free-to-air networks in a manner that was never intended when SBS was established as a standalone entity in 1991.

The national broadcasters enjoy a range of competitive advantages stemming from their government ownership. The regulatory regime that the national broadcasters operate under is far less prescriptive than for commercial networks. For example, the national broadcasters:

- have no Australian content or local programming obligations;
- have greater time zone flexibility and a far less rigorous code approval process;
- have a separate budget allocation for transmission costs and do not pay for spectrum; and
- are exempt from all Commonwealth, State and Territory taxes (except FBT and GST).

As Government funded entities, the national broadcasters can bring to bear an approach to content acquisition that is different from commercial networks. For example, a different risk profile and cost of carrying capital provides a competitive advantage that enables the national broadcasters to offer more attractive terms to content suppliers.

These are competitive neutrality issues and are all factors which SBS TV uses in pursuing a strategy that moves it away from its principal purpose and towards becoming a fourth commercial network, operating in a less constrained regulatory and commercial environment. Free TV recommends that the Panel note the existence of these competitive neutrality issues and focus its recommendations on alleviating the underlying cause.

Free TV recommends an enhanced regulatory function should be created for the ACMA to report on the performance of the national broadcasters in delivering on their charter obligations. SBS should also specifically be required to take account of the services provided by the commercial sector (as is already required of the ABC). Our proposed new reporting regime would enable transparency on how the national broadcasters took account of the services provided by the commercial sector.

To address the incentive for SBS to pursue commercial revenue, the Government should provide longer term funding certainty beyond the current triennial funding model to ensure that both our national broadcasters can plan for the future in delivering the distinctive services that were envisaged when they were established.

2 Recommendations

- Reaffirm the important and distinctive role that Australia’s national broadcasters should play in our media landscape.
- Confirm the continued relevance and importance of the respective charters of the ABC and SBS.
- Find that competitive neutrality issues are being created by SBS TV moving away from charter aligned content towards commercial content.
- Address the commercial advantages enjoyed by the ABC and SBS stemming from the operation of disparate regulatory frameworks:
 - Provide greater flexibility in Australian content quotas for commercial free-to-air networks; and
 - Require ACMA registration of national broadcaster codes of practice.
- Require the ABC and SBS to contribute towards the cost of operating and maintaining the transmissions sites managed by RBA Holdings Pty Ltd.
- Create a requirement for SBS to take account of the services provided by the commercial sector, mirroring the obligation that already exists on the ABC.
- Create annual competition and charter reviews by the ACMA to report on the performance of national broadcasters in regard to:
 - taking account of the services provided by the commercial sector;
 - meeting their charter obligations; and
 - any other matter set out by the Minister.
- Require national broadcasters to report on how they took account of the commercial sector in the past 12-month period and how they plan to take account of the findings of the most recent ACMA competition and charter review.
- Extend the current triennial funding model as part of a package of measures to require adherence to charter aligned activities, to address some of the incentives to pursue commercial content at the expense of charter aligned programming.

3 Introduction

Free TV Australia thanks the panel for the opportunity to submit to this important inquiry. We would welcome further opportunities to engage as the panel finalises its report by September 2018.

Free TV represents all of Australia's commercial television networks, covering metropolitan, regional and remote areas.

This submission is broken into 6 sections:

- **Context** – The continued importance of the national broadcasters in Australia's media landscape and the need to ensure that they continue to focus on delivering high quality content that aligns with their charters, across all their channels and platforms.
- **What's changed in the last five years** – As noted in the Issues Paper the media market has changed significantly since the SBS was introduced and in recent years the SBS in particular has increased its acquisitions of off-charter content. This shift has coincided with other changes in the media sector that mean SBS is more regularly competing against the private sector.
- **What do we mean by competitive neutrality** – We support the Panel's proposed interpretation of competitive neutrality and in particular the use of the OECD definition, subject to an additional criterion on operational decision making and risk management as required by the terms of reference for this inquiry.
- **Competitive neutrality issues** – There are demonstrable competitive advantages that SBS enjoys stemming from its Government ownership, from its regulatory framework and its approach to risk management that it brings to bear in the content acquisition market.
- **International comparison** – The UK Government has recently reviewed the Charter and Agreement that establishes the governance framework for the BBC. The new governance framework includes mechanisms specifically designed to address competition issues and therefore may provide some useful guidance for this inquiry.
- **Remedies** – We propose an enhanced regulatory framework administered by the ACMA to ensure that our national broadcasters remain distinctive, deliver on their charters and appropriately take account of the commercial sector.

3.1 The ABC and SBS should be strong and distinctive

Free TV acknowledges and fully supports the role that the ABC and SBS are intended to play in Australia's media landscape. Indeed, together the national broadcasters and the commercial networks are the joint custodians of the broadcast television platform that millions of Australians rely on each day for their news and entertainment.

This inquiry should reinforce the crucial role that national broadcasters play in the lives of Australians. While we have long called for an inquiry into the increasing commercial focus of SBS TV in particular, we remain firmly of the view that there is a clear role for a strong and distinctive broadcast offering from both ABC TV and SBS TV that contributes to the overall diversity of broadcasting services available to Australians.

Australians recognise the distinctive content of the ABC and SBS. With limited exceptions, ABC TV's broadcast schedule has a unique tone and texture that is unmistakably the ABC. Likewise, there are many elements of the SBS TV schedule that are unmistakably driven by the core charter obligations of the intended Special Broadcasting Service.

We do not consider that the charters of the respective broadcasters are deficient. In fact, our main concern is that SBS TV increasingly has a focusing on programming that is not aligned with its existing charter.

In an opinion piece for the Sydney Morning Herald on 30 May 2018, the Chairman of the ABC, Mr Justin Milne, incorrectly asserted that commercial broadcasters were looking for a review that:

“relegates the public broadcaster to a “market failure” function limited to programming about fine arts, science, education or philosophy. This would likely spell the end for popular programming like Four Corners, Australian Story, Gruen or Sea Change”¹

As we elaborate on in the next section, it is not our contention that the ABC and SBS should be confined to content with limited audience appeal. Indeed, the programs that Mr Milne quotes are precisely the type of programming we think of when we talk about a broadcast schedule that has the tone and texture that we identify with the ABC. However, given they are Government funded the national broadcasters must be focussed on delivering services that are distinctive, and would not otherwise be available to Australian television audiences.

3.1.1 Interpreting the charters

The ABC charter directs it to (inter alia) provide Australians with:

“innovative and comprehensive broadcasting services of a high standard as part of the Australian broadcasting system consisting of national, commercial and community sectors and, without limiting the generality of the foregoing, to provide:

- (i) broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community; and*
- (ii) broadcasting programs of an educational nature.”*

In addition to delivering programming to Australians living overseas, the ABC charter also makes it a function of the corporation to provide digital media services and to encourage and promote the musical, dramatic and other performing arts in Australia.

Importantly, section 6(2) of the ABC Act requires it to provide a “balance between broadcasting programs of wide appeal and specialized broadcasting programs.” This makes clear that while there should be a balance between programming that could be described as having a niche appeal, the ABC also has a role in providing programming that will appeal to a wider audience.

Therefore, while we would support a stronger role for the ABC in some elements of the market (for example, Australian content primarily made for a child audience) they are clearly not limited to solely serving a role of a market failure broadcaster.

The SBS charter is drafted with clear differences from that of the ABC. While the ABC’s charter specifically refers to achieving the balance of programming with a wide appeal, the principal function of the SBS is to:

“provide multilingual and multicultural radio, television and digital media services that inform, educate and entertain all Australians, and, in doing so, reflect Australia’s multicultural society.”

The SBS charter goes on to prescribe the activities the SBS must undertake in delivering on that principal function:

- a) contribute to meeting the communications needs of Australia’s multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities; and*
- b) increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society; and*
- c) promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people; and*
- d) contribute to the retention and continuing development of language and other cultural skills; and*

¹ <https://www.smh.com.au/national/commercial-interests-out-to-get-the-abc-20180530-p4zici.html>

- e) *as far as practicable, inform, educate and entertain Australians in their preferred languages; and*
- f) *make use of Australia's diverse creative resources; and*
- g) *to the extent to which the function relates to radio and television services—contribute to the overall diversity of Australian television and radio services, particularly taking into account the contribution of the Australian Broadcasting Corporation and the community broadcasting sector; and*
- h) *to the extent to which the function relates to radio and television services—contribute to extending the range of Australian television and radio services, and reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression.*

We consider that the charter clearly establishes the expected roles and functions of the Special Broadcasting Service. In particular, it makes very clear how SBS is expected to undertake its principal function in providing services to Australians of diverse backgrounds and increasing awareness and understanding to all Australians.

It is important not to misinterpret the reference to “all” Australians in the opening clause of the charter. Providing services to all Australians is not mutually exclusive with the remainder of the charter. Properly interpreted, the charter requires that SBS’s principal function is to reflect Australia’s multicultural society back to all Australians via multilingual and multicultural programming.

3.1.2 Incidental functions must remain incidental

Sections 6(1) and 6(2) of the *SBS Act* constitute the charter of SBS. Sitting outside of the charter, Section 6(5) of the *SBS Act* provides:

A subsidiary function of the SBS is to carry on, within or outside Australia, any business or other activity incidental to the fulfilment of the Charter.

That is, as a minor accompaniment² to the functions provided under their charter, SBS is permitted to undertake any other business or activity. As demonstrated in section 4.1, much of the programming currently broadcast by SBS does not fit within its principal function. The extent of this programming takes SBS well beyond the ordinary meaning of “incidental.”

Importantly, the inclusion of the incidental function “catch-all” means that section 6 of the *SBS Act (1991)* provides an exhaustive list of the roles and functions of SBS. To the extent that SBS maintains services or functions that do not sit within its charter or form a minor accompaniment to charter aligned activities, SBS is acting outside of its enabling Act.

It is also worth noting that section 10(1)(i) of the *SBS Act* makes it a duty of the SBS Board to:

“ensure that the pursuit by the SBS of its subsidiary functions does not detract from the SBS fulfilling its Charter responsibilities.”

This is a clear legislative prescription that any subsidiary functions performed by the SBS are to remain subsidiary.

3.1.3 Must have regard to services provided by the commercial sector

Under the ABC charter, in providing its services, it must take account of:

the broadcasting services provided by the commercial and community sectors of the Australian broadcasting system;

The requirement to take account of the services provided by the commercial sector is omitted from the SBS charter. SBS is required to take account of the services provided by the ABC and the community sector. This wording has been in place since 1991 (with the word “community”

² Oxford dictionary definition of incidental: “happening as a minor accompaniment to something else.”

replacing the previous “public” in 1992). Addressing this anomaly by requiring SBS to take account of the services provided by the commercial sector is our only recommended change to the charter (see section 8 of this submission). As made clear in the following sections, this dated provision fails to take account of the modern media landscape and was struck at a time when it was never envisaged that SBS would operate in the manner it is today.

3.2 Policy intent versus real world outcomes

3.2.1 Advertising was not meant to impact programming

The second reading speech in the House of Representatives on the *SBS Act* is very clear on the expected functions and roles of SBS. In addition, it specifically addresses the issue of the potential for advertising and sponsorship revenue to impact on the SBS schedule.

*The Minister is sensitive to the concern that advertising and sponsorship revenue funding has the potential to alter the scheduling and content of SBS programs. The distinctive character of the SBS will, therefore, be preserved through a number of measures. Foremost there is the detailed charter and the obligation on the board to ensure the independence and integrity of the SBS. Also, the SBS board will be required to report annually to Parliament on how its programming activities have related to its charter obligations. It will also be required to report on the detail of the advertising and sponsorship arrangements it has entered into.*³

This makes it clear that the expectation of the Government in establishing SBS as a separate corporate entity was that the prescriptive and exhaustive charter would protect and preserve the distinctiveness of the SBS schedule. However, some observers have noted that allowing advertising on SBS had an immediate impact on it moving LOTE programming to outside of prime time.⁴ A further unintended effect appears to have been to bestow upon the SBS conflicting incentives – a) to provide charter-aligned content, but b) to chase commercial audiences and deliver on commercial expectations – an uneasy trade-off with a strained balance.

In addition, it was the expectation of Government that the advertising on SBS would be drawn from a new cohort of advertisers.

*The effect on the commercial broadcasting sector of the introduction of advertising and sponsorship is not expected to be significant. The SBS audience share is relatively smaller and its advertising revenue share is expected to reflect this. Furthermore, the SBS serves many distinct audiences and has the potential to appeal to companies which do not presently advertise on radio or television.*⁵

That is, because SBS was expected to maintain its distinctiveness and focus on its principal function, it was to appeal to advertisers seeking to reach a new audience. Unfortunately, the outcome expected by the Government of the day has not eventuated and SBS has instead changed its programming line-up to attract the same advertisers as those already advertising on commercial television.

Work previously undertaken by Free TV demonstrated that 85 per cent of advertisers on SBS also advertise on commercial free-to-air television (Nielson Adex data).⁶ This was again highlighted on 29 May 2018 when SBS announced its broadcast partners for the 2018 FIFA World Cup. All of its broadcast partners are large commercial brands with extensive presence on commercial television (see Box 1). Similarly, in 2017 SBS launched a new cooking

³ House Hansard, Mr Griffiths (Minister for Resources), Special Broadcasting Service Bill 1991, Second Reading, 12 September 1991

⁴ Brian Johns, ‘SBS: Coping with a Strange Idea’, in *Multicultural Australia: The Challenges of Change*, D. Goodman et al. Carlton, Scribe, 1991

⁵ House Hansard, Mr Griffiths (Minister for Resources), Special Broadcasting Service Bill 1991, Second Reading, 12 September 1991

⁶ http://www.freetv.com.au/Media/Submissions/2015_0007_SUB_FINAL_Senate_Environment_and_Communications_Committee_SBS_Advertising_Flexibility_and_Other_Measures_Bill.pdf

competition program, *The Chefs' Line*. As shown in Box 2, the advertisers were again major brands. The program also included extensive commercial product placement.

While these commercial arrangements are not a competitive neutrality issue in and of themselves, they do highlight the focus of SBS on attracting and maintaining mainstream advertisers.

A 1999 study on the impact of advertising on public broadcasters commissioned by the BBC and carried out by McKinsey and Co in 19 countries, found very strong evidence that increased advertising caused public service broadcasters to put the needs of the advertiser ahead of the viewer and concluded that an increasing dependence on advertising leads inexorably to a more populist and less distinctive schedule.⁷

The Communications Department Efficiency Study (the "Lewis review") acknowledged that increased advertising will result in risks to the amount of charter-related content by shifting the focus from viewer to advertiser. Further, there will be a greater pressure on SBS management to consider the trade-off of delivering on commercial expectations, against delivering those functions described in the SBS charter.

This "commercialisation effect" has clear implications for SBS's programming choices, as discussed in the next section.

BOX 1: SBS'S BROADCAST PARTNERSHIP ANNOUNCEMENT

SBS Announces Official Broadcast Partners for 2018 FIFA World Cup Russia™

SBS has today announced **TAB, Hyundai, Hisense, adidas and Mitre 10** as broadcast partners for the 2018 FIFA World Cup™.

Adam Sadler, Director of Sales, SBS Media said: "Football is a sport that unites all Australians and the response to the FIFA World Cup has been extremely positive. It's fantastic to have TAB, Hyundai, Hisense, adidas and Mitre 10 join SBS for what will be the biggest sporting event in 2018.

We have been working with these brands for many months to ensure we can deliver truly integrated partnerships that provide real value and cut through across our multi-platform coverage".

⁷ McKinsey & Company . 1999. Public Service Broadcaster around the World. A McKinsey Report for the BBC January 1999. London: McKinsey & Company.

BOX 2: A CHEF'S LINE MAJOR SPONSORS



4 What's changed?

A relevant question that has been posed is why is this an issue now? The answer to this question is three pronged. As explained in this section, the reason that competitive neutrality is now a significant matter is that:

- SBS has had a deliberate and increasing strategy to focus its prime-time TV offerings on commercial content that does not fit within the principal functions as set out in its charter;
- The creation of multi-channels and changing international practice for acquiring content has led to more frequent content acquisition transactions; and
- The competitive environment in which all Australian media companies operate has been challenged by the entry of international SVOD players at the same time as Google and Facebook have taken the lion's share of the advertising market.

None of these three factors were considered when the Commonwealth published its Competitive Neutrality Policy Statement in June 1996. Now is the appropriate time for the Government to reassess these competitive neutrality issues in light of the modern media landscape and the commercial behaviour that now defines SBS TV.

This section establishes that SBS does compete directly against commercial networks for content. The fact that there is this direct competition is not, by itself, a competitive neutrality issue. However, when combined with the regulatory imbalances and other competitive behaviours outlined in section 6, including their government owned risk profile, it is clear that the commercial focus of SBS has become a neutrality issue.

4.1 SBS has increased commercial focus

Since corporatisation in 1991, SBS TV has become increasingly commercially focussed. From the original policy intent of limited advertising between programs, focussed on advertisers seeking to engage with a new audience, to today with two entire TV channels being branded with American-owned commercial networks.

In September 2015, Scripps Network Interactive announced that they had entered into a major output deal with SBS to supply programming from across the food category including cooking competitions, culinary adventures and home entertaining.⁸ The deal included taking the branding owned by Scripps Network.



⁸

The following year, SBS announced a partnership with New York based media company Vice Media LLC to launch SBS VICELAND. The channel launched on 15 November 2016. Since that time, there has been a marked shift in the programming available to Australians on what was formerly known as SBS TWO (as shown in Box 3).

BOX 3: THE CHANGING FACE OF SBS

Compare the pair – afternoon and evening programming 8 June		
	2012	2018
		
3pm	Greek News	Fashionista Balls Deep Dateline
4pm	Polish News Turkish News Arabic News	365: Every Day Documentaries Vice News Tonight PSB Newshour
5pm	Hindi News	If you are the one
6pm	Global Village The World's Most beautiful cities Come Dine with me: Greece	The Classic Car Show
7pm	Insight	Batman
8pm	Dateline	Batman Adam Looking for Eve
9pm	Movie: Trivial Matters	The Handmaid's Tale
10pm	Movie: Trivial Matters	Queer as Folk
11pm	Criterium Du Dauphine 2012	Criterium du Dauphine 2018

4.1.1 The commercial strategy is no secret

That SBS now has a deliberate strategy to target commercial programming is no secret. Indeed, in providing evidence to the Senate Estimates hearing in February 2018, SBS Managing Director Mr Michael Ebeid told the Environment and Communications committee:

"I remind the committee that we do from time to time have programs that have absolutely nothing to do with our charter that are broad entertainment programs, to be able to attract a slightly broader audience..."

As set out in section 3.1.1, the SBS Act sets out a prescriptive principal function to provide multilingual and multicultural radio, television and digital services, with an allowance for subsidiary functions so long as they remain incidental to the fulfilment of the charter.

To ascertain whether SBS's approach of acquiring off-charter had gone beyond "incidental", Free TV commissioned Dr Murray Green to review 150 programs broadcast during 2017 across SBS One, SBS VICELAND and SBS Food Network. Dr Green was asked to review the programs and determine whether they were aligned with the charter obligations.

Dr Green is a lecturer in the Law Faculty at the University of Technology Sydney and is Honorary Professor in Public Diplomacy at Macquarie University. He was previously Director Corporate Strategy and Governance and Director International at the ABC.

This analysis was based on the top 50 rating programs for each channel during 2017. As set out in Dr Green's paper that is attached to this submission, the top 50 programs are used in this evaluative measure as it is in this segment that the keenest competition for audience occurs and where the issues of competitive neutrality are most explicit.

Dr Green's analysis highlights that on SBS One, 52 per cent of the top 50 programs were not aligned with the charter obligation. On SBS VICELAND this number increases to 58 per cent of programs that were not aligned with the charter. This jumps again to 66 per cent with content on the Food Networks. These numbers are broadly consistent with the more anecdotal survey results of friends and supporters of SBS undertaken by Save our SBS, as discussed below.

Appendix 1 of this submission sets out the programs on SBS VICELAND that Dr Green has assessed as not being aligned to their principal charter activities. The table also shows that the majority of this content has aired previously on a commercial network—further demonstrating the highly commercial nature of the offering from SBS VICELAND.

A situation where up to 66 per cent of the top programs on an SBS channel are not aligned with their charter cannot be construed as "incidental". As noted in Dr Green's analysis, much of the content that has been broadcast on SBS is high quality. However, when the SBS enabling Act requires that its subsidiary functions only form a minor accompaniment to charter aligned activities, this independent analysis demonstrates that SBS TV is currently acting in a manner inconsistent with its predominately publicly funded policy intent.

4.1.2 SBS wants to be a free Netflix

SBS's increasing commercial focus and acquisition of charter unaligned content extends to its On Demand offering. Under the headline of "Netflix has a rival in Australia and it's free" an article on the SBS website discusses the content available on SBS On Demand:

"I'll be honest, until I'd started working for SBS, I'd never tried SBS On Demand.

I assumed the site was just a catch-up service for the news, the soccer and Go Back to Where You Came From.

It's not.

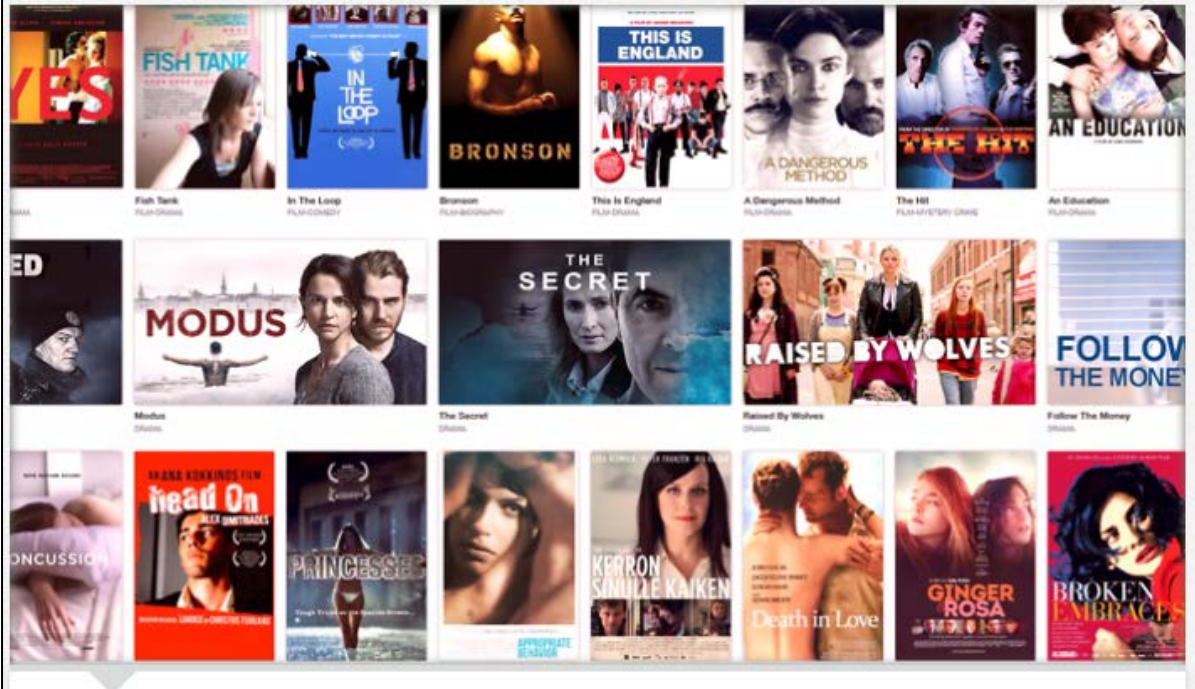
All those things are there – so you can definitely get your Lee Lin Chin World News fix – but so are hundreds of hours of other movies and full TV series.

It's actually much more like Stan, Presto and Netflix (except it's totally free)."⁹

⁹ <https://www.sbs.com.au/guide/article/2016/06/21/netflix-has-rival-australia-and-its-free> Accessed 5 June 2018

20 JUL 2016 - 5:16PM

Netflix has a rival in Australia and it's free



As the article goes on to say, SBS content acquisition staff “have been sifting through thousands of hours of content from around the world and buying the rights so Australians can access them for free.”

In developing business plans for entry into Australia, SVOD (Subscription Video-on-Demand) players (such as STAN) scoped the potential for subscriber growth and the entry of other SVOD players. It could not have been expected that a Government-owned broadcaster would have expanded its BVOD (Broadcasting Video-on-Demand) offering to such a degree that it would be competing against SVOD players for marque content like *A Handmaid's Tale* (that is not multicultural and where revenue from advertising would almost certainly not have covered the cost of the content). In fact, the national broadcasters would have been seen as potential suppliers of content and not competitors for it.

A fundamental question should be how SBS makes decisions around resource allocation to achieve charter obligations. At present there is no clear evidence based or published methodology to measure SBS's performance against its charter, nor any accurate cost allocation to charter versus other services, or ability to identify the direct costs of charter functions which means there is no transparency over cost allocation. This gives the SBS the capacity to divert charter aligned content funding to expand into other areas without any accountability, such as SBS On Demand.

As noted in the Sydney Morning Herald:

While the Netflix-versus-commercial-TV battle dominated the headlines, our public broadcasters used this to their advantage, mounting a quiet revolution. Both ABC and SBS have met the challenge head-on, cherry-picking the best features of subscription video-on-demand (VOD) for their free streaming platforms.¹⁰

¹⁰ <https://www.smh.com.au/entertainment/tv-and-radio/drama-is-the-new-black-how-abc-and-sbs-became-netflixs-toughest-rivals-20180530-h10qq1.html>

This approach of SBS On Demand has the potential to distort consumer expectations of what can be currently supported through an advertiser funded BVOD, ultimately undermining the BVOD business model itself. Further, the SVOD market is being distorted by making available mainstream commercial content of no multicultural relevance, for free on-demand and with limited advertising.

4.1.3 SBS’s acquisitions are a significant part of the market

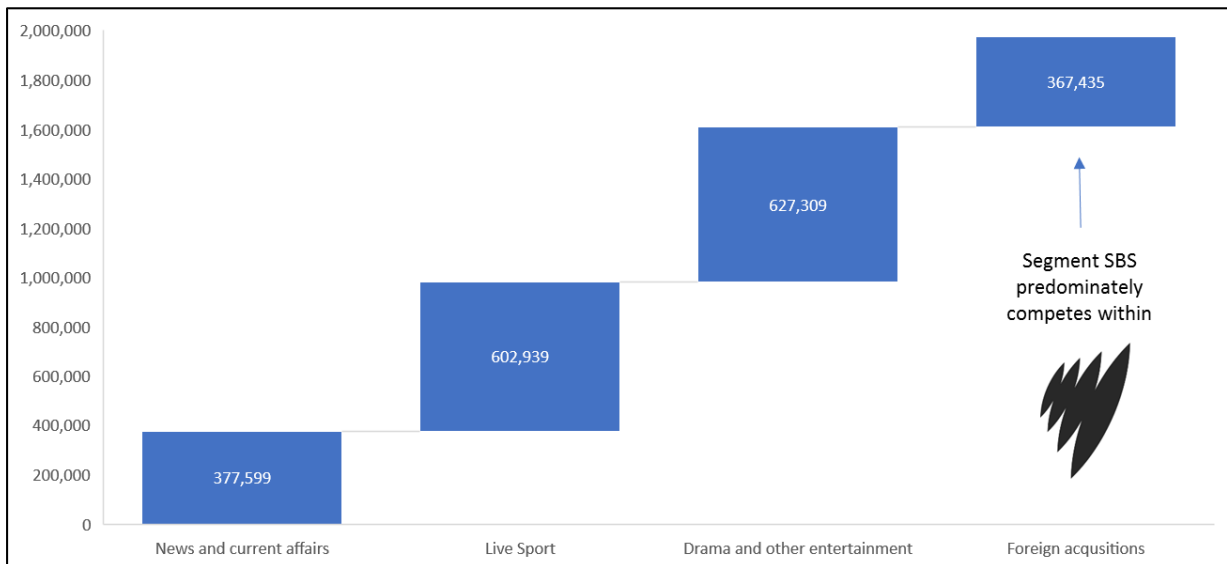
This commercial focus of SBS brings it into direct competition with the commercial broadcast sector. Traditionally, commercial networks would have expected to compete against SBS for TV for programs from international public-sector broadcasters (for example BBC, PBS). However, commercial networks are now seeing SBS entering into negotiations for the same content with leading US studios including Paramount and MGM.

The Panel has asked for examples of where SBS has had a material impact on the price of commercial content. For this purpose, we have attached a commercial-in-confidence Appendix 2 to this submission.

It is also important to appreciate that there is likely no sizeable difference between the international content acquisition budget of a commercial network and SBS TV. Regardless, it is important for the Panel to bear in mind that:

- SBS’ acquisitive behaviour impacts marginal price, in addition to impacting on the prevailing terms and conditions (for example, payment terms)
- Over 81% of the content budgets of the commercial networks is invested in Australian content where SBS is not an active competitor.¹¹ As the waterfall chart below demonstrates only a small percentage of the content budgets of the commercial networks is available for predominantly foreign content acquisitions that form the vast majority of SBS’s expenditure (see Figure 1).

FIGURE 1: BREAKDOWN OF COMMERCIAL NETWORKS EXPENDITURE



Source: ACMA Program Expenditure Information 2016–17

To fully appreciate the extent of the impact on commercial broadcasters of SBS’s increasing commercialisation, it is necessary to overlay this financial breakdown with the make-up of the television schedule.

¹¹ <https://www.acma.gov.au/-/media/Community-Broadcasting-and-Safeguards/Report/pdf/Program-expenditure-information-2016-17-pdf.pdf?la=en>

For the commercial networks, the period from around 8.30-9pm onwards is increasingly challenging. This is the segment that is most impacted by the growth in competition from the streaming services and other online competitors. This is also the segment of the schedule where foreign acquisitions are generally broadcast.

Importantly, the advent of the multi-channels has meant that commercial broadcasters are now able to show a larger variety of programs that historically would not have attracted a sufficiently large audience. This second-tier programming – which is mainstream in character but not the kind of blockbuster generally broadcast on the primary channel – is where commercial networks are increasingly competing with SBS.

Therefore, there is a colliding commercial impact from a more challenging environment in which to monetise content in the later evening, combined with increasing competition from SBS for that content. This squeezes commercial networks on both the revenue and cost sides of the equation, amplifying the competitive neutrality issues observed below.

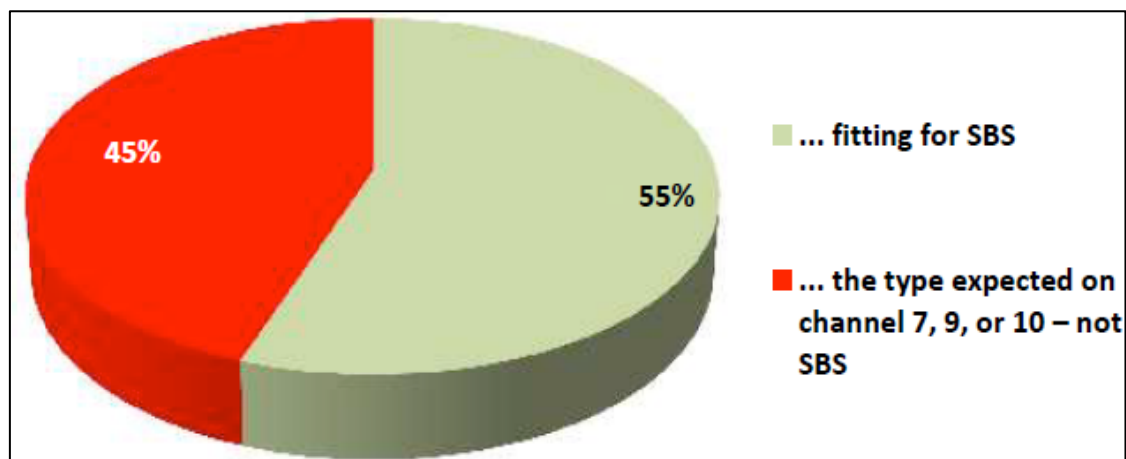
4.1.4 Concerns are being raised by SBS’s own stakeholders

Save our SBS undertook a survey in May 2018 to understand the views of the supporters and friends of SBS with regard to the programming on SBS TV and its relationship with the commercial sector. The results are instructive:

- 70% of respondents considered that SBS has insufficient niche programming
- 69% considered that the programs on SBS are now of the type expected on commercial broadcasters rather than a public broadcaster compared to more than 10 years ago
- 52% considered that SBS now competes with commercial broadcasters.

Consistent with our own independent analysis, of the programs noted by the friends and supporters of SBS, 55 per cent were considered to be “fitting for SBS” and 45 per cent were of the type “expect on channel 7, 9, or 10 – not SBS”.

FIGURE 2: EVALUATION OF PROGRAMS ON SBS BY FRIENDS AND SUPPORTERS



4.2 Big production output deals are finished

Another important change in the media landscape that has meant that SBS’s behaviour has had a more significant impact than once it might have is the change in the international content market. Until recently, all commercial television networks have had long term supply deals with studios to receive their production output.

However, for network TV, these arrangements have largely been replaced by more bespoke acquisition arrangements on a program by program basis. Primarily this was due to the

increased risk associated with long term and expensive output deals in an environment of declining revenues and soft consumer demand for overseas content on free-to-air television.

While some output deals are still being signed (see for example Amazon Prime and AMC), a general shift away from output deals has been observed worldwide and across platforms. Netflix content chief Ted Sarandos told a UBS Global Media and Communications Conference in December 2015 that “I don’t think we’ll enter into big output deals in the US anymore.”¹²

The change in the acquisition model means that content buyers from the networks are entering the market more regularly for content to fill out their schedules. This increased frequency of going to market has resulted in more regular competition with SBS, including for streaming rights.

4.3 Competition for eyeballs has increased significantly

It is well understood that the competition faced by the television industry has changed more in the last 5 years than at any time since its creation. Consumers can now access television-style content on multiple digital devices and through a range of platforms and services. These include linear free-to-air TV, broadcaster video-on-demand (BVOD), subscription television services such as Foxtel, subscription video on demand (SVOD) services including Netflix and Stan, and online advertising supported content like YouTube.

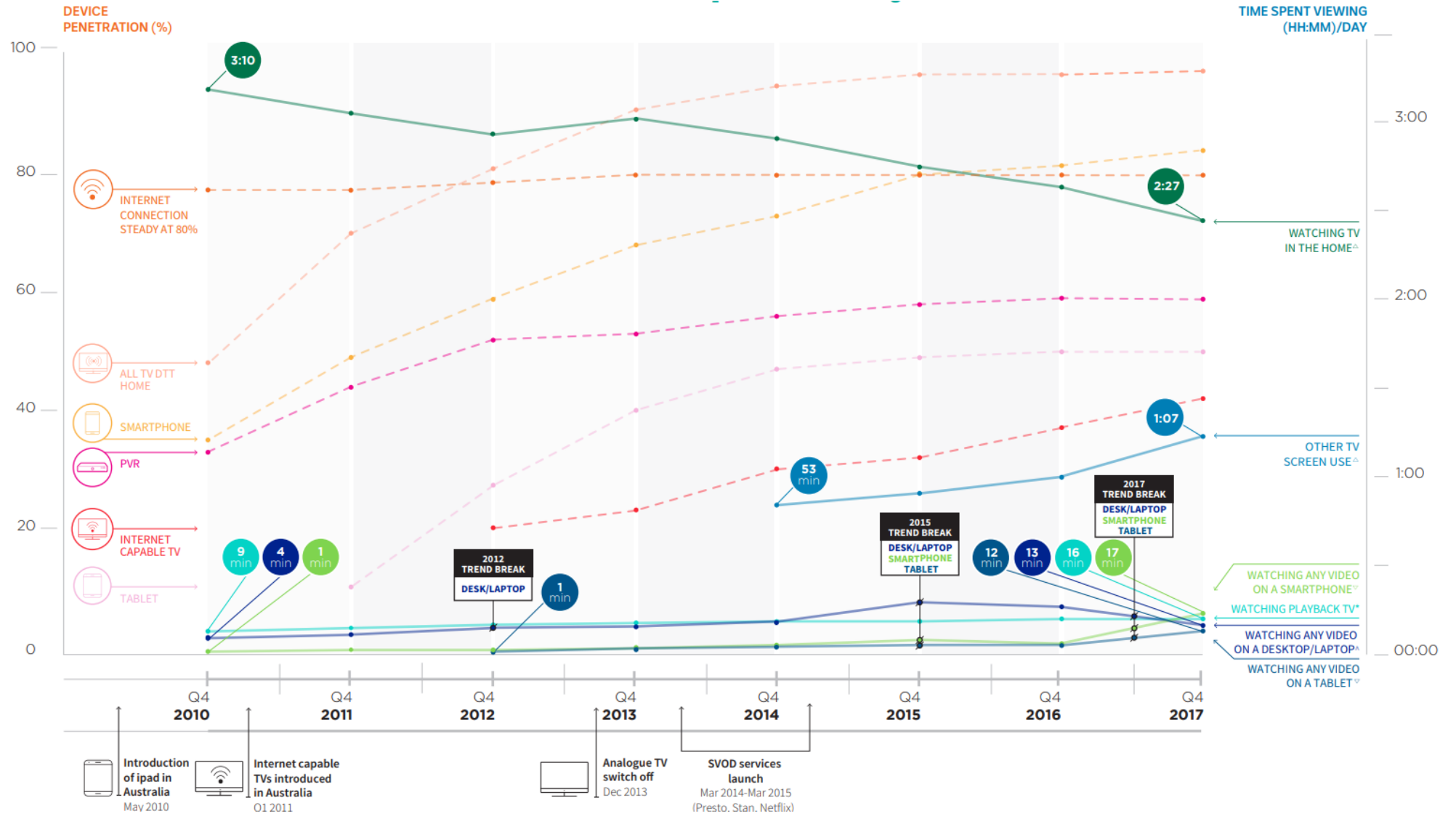
This explosion in competition for viewers is delivering exceptional choice for consumers, but is also very challenging for the traditional free-to-air TV sector. Audiences are fragmenting, advertising revenues are declining and consumers are quickly forming new viewing habits.

As shown in Figure 3, live TV viewing remains by far the dominant platform on which to consume video content, with almost 2.5 hours of viewing every day. However, there has been a gradual decline in minutes viewed since 2010. Some of this decline has shifted to BVOD catch-up services, however, some is going to “other TV screen use” including SVOD and gaming.

This negative trend in total minutes viewed means that competition from SBS has a bigger impact at the margin than it once did, and it means that the issues of competitive neutrality have a greater potential to distort the market.

¹² <http://www.cablefax.com/programming/netflix-content-chief-us-output-deals>

FIGURE 3: CHANGED AUDIENCE PATTERNS



Source: OzTAM Video Viewing Report, Q4 2017

5 Defining competitive neutrality

In this section we assess the Panel's approach to defining competitive neutrality for the purposes of this review. This establishes the framework for section 6 that assesses the existing situation against these competitive neutrality principles.

5.1 Moving on from 1995

The economy has developed significantly since 1995, when the concept of competitive neutrality was introduced into the Australian economy as part of the National Competition Policy (NCP) Principles Agreement. In today's more sophisticated economy, the focus of competition policy is no longer limited to breaking up state owned vertical utilities, undertaking corporatisation reforms and requiring the payment of tax equivalents and debt neutrality fees. Rather, today the term competitive neutrality must be used in a broader context, and also encompass how behavioural and operational decision-making matters impact on the competitive market. For example, the risk management approaches that government owned entities bring to bear on a competitive market and the terms and conditions that they are prepared to contract on.

Pursuant to the 1995 NCP Principles Agreement, the Australian Government published its Commonwealth Competitive Neutrality Statement in June 1996. Demonstrating the limited application of competitive neutrality principles at the time, the only regulatory advantages that are acknowledged in the policy statement are "exemption from Australian Broadcasting Authority regulations. It also has first refusal on some television event rights and has its transmission provided at no cost."¹³

5.2 Panel's proposed approach to definition

At the broadest level, the OECD definition of competitive neutrality, as noted by the Panel, would seem appropriate:

"Where no entity operating in an economic market is subject to undue competitive advantages or disadvantages."¹⁴

But in order to adequately perform an assessment against this broad statement, a more detailed statement of the necessary conditions for competitive neutrality is required. The Panel's approach to this task has been to note four advantages that could result in undue advantages accruing to Government businesses.

In 2012 the OECD published a compendium of OECD recommendations, guidelines and best practices for competitive neutrality. The Panel's approach to defining competitive neutrality largely aligns with some of the priority areas as set out by the OECD:

- Regulatory neutrality
- Tax neutrality
- Debt neutrality and outright subsidies
- Achieving a commercial rate of return.¹⁵

¹³ Commonwealth Competitive Neutrality Policy Statement, June 1996, pg 30

¹⁴ Inquiry into the competitive neutrality of the national broadcasters, Issues Paper, April 2018, pg. 10

¹⁵ OECD, 2012, A Compendium of OECD Recommendations, Guidelines and Best Practices Bearing on Competitive Neutrality, pg 12

5.3 Operational decisions and approach to risk management

The terms of reference specifically call out operational decision making and risk management as a focus for this inquiry. This is an important consideration as these matters are not explicitly addressed in the 1995 NCP work or in the OECD principles.

When a government owned business receives a proportion (or all) of its funding from the taxpayer, it will necessarily have a financial year to financial year planning horizon. Or in the case of our national broadcasters, a three-year horizon under the current triennial funding model. In addition, the fact that its funding is in part or in whole guaranteed blunts the normal incentives that impact on the risk management protocols of fully commercial firms.

This could be as overt as needing to spend the remaining budget before the end of the financial year. Alternatively, these blunted risk management incentives could manifest as a more extreme risk profile for procurement or other acquisitions than would normally be observed in the commercial sector.

To capture this concept as a general guiding principle, we would suggest that the Panel also review whether the budgetary controls and approaches to risk management are consistent with best practice generally prevailing in the commercial sector.

6 Competitive neutrality issues

This section outlines the range of competitive neutrality issues that stem from the operation of the regulatory framework that applies to the national broadcasters and SBS's operational decisions and approach to risk management.

It is important to note that these are competitive neutrality issues only because SBS TV is, for a considerable amount of its broadcast schedule and On Demand library, acting in a manner that is inconsistent with its enabling Act. Therefore, while we urge the Panel to carefully consider these issues and recommend changes to ensure regulatory parity, the primary consideration of the Panel should be that the first best solution to the identified competitive neutrality issues is to ensure that SBS TV is acting in a manner consistent with its Act.

Consistent with this approach the remedies that we propose in section 8 are focussed on addressing the underlying cause of the competitive neutrality issues, rather than trying to treat the symptoms.

6.1 Regulatory framework

The following sections highlight the differences in the regulatory framework that applies to SBS TV as opposed to commercial broadcasters. These are summarised in Figure 4.

6.1.1 Australian and local content

The commercial free-to-air broadcasting industry is the largest producer and commissioner of Australian content. We are committed to ensuring Australian audiences continue to see Australian faces, voices and stories on their screens. In 2016/2017, we invested a record \$1.6 billion in creating Australian content. On average, 6 out of every 10 dollars spent in the local production sector comes from commercial networks.

However, rather than having the flexibility to respond to changing audience demands as part of this investment, commercial networks are required to follow a prescriptive set of content quotas and sub-quotas across Australian drama, documentaries and children's content. In addition, there is a requirement to broadcast 55% of Australian content on the primary channels from 6am to midnight, together with an annual requirement (set out in the *Broadcasting Services Act 1992 - BSA*) to broadcast 1,460 hours annually of local content across the multi-channels.

Children's content is subject to a further regulatory hurdle and must be approved by the ACMA as being compliant with the Children's Television Standards before programming can be counted towards the relevant C and P quotas. There are also strict advertising limitations around C and P programs.

The national broadcasters are not subject to any of these local content obligations. This gives the national broadcasters a competitive advantage as they are able to respond immediately to changing audience patterns.

In addition, there is an anomaly in the content that commercial networks can count towards the required quotas which creates a barrier to commercial networks showing content which SBS and ABC are not subject to. A commercial free-to-air broadcaster can screen an Australian drama or mini-series that has already appeared on an SVOD or AVOD service and still have it count towards its drama sub-quota. It can also do this for an Australian feature film or telemovie that has been broadcast on subscription TV. Yet it cannot count an Australian drama series or mini-series that has been broadcast on subscription TV.

For example, ABC TV purchased the rights to *Wentworth* that had aired on Foxtel. A commercial broadcaster could not have counted the content towards its drama quota and the economics do not support such an acquisition without it fulfilling the quota.

As proud supporters of Australian content, we are pleased that a quality Australian drama like *Wentworth* found a home on free-to-air television, but it is disappointing that the regulatory framework effectively locked commercial networks out of acquiring this content.

6.1.2 Less rigorous Codes of Practice registration requirements

Section 10(j) of the *SBS Act* requires the Board to develop codes of practice relating to programming matters and to notify those codes to the ACMA. This is a fundamentally different regulatory model to that applying to commercial broadcasters.

Commercial free-to-air television content is regulated under the Commercial Television Industry Code of Practice (Free TV Code). The Code is developed by Free TV in consultation with the public and must be *registered* with the ACMA.

Before registering the Free TV Code, the ACMA must be satisfied that it provides appropriate community safeguards for the matters it covers; is endorsed by a majority of commercial television stations; and members of the public were given adequate opportunity to comment. The ACMA is then tasked with enforcing the Free TV Code, with significant penalties for non-compliance.

Applying disparate regulatory regimes leads to inequitable regulatory outcomes. For example, SBS has allowed itself to broadcast film content that is classified “M” between the hours of 7.30pm and 6am.¹⁶ A similar situation exists for ABC TV that has extended its Code to allow M programming from noon-3pm everyday.

However, under subsection 123(3A) of the BSA¹⁷, the Free TV Code must only allow film content classified M to be broadcast between 8.30pm and 5am and noon-3pm on school days.

This means that every day, SBS is at a competitive advantage by having the scheduling flexibility to provide an extra 2 hours of M classified film content.

A similar disparity occurs for MA15+ film content that SBS can broadcast from 8.30pm, whereas the Free TV Code is restricted to allowing broadcast from 9pm.

In addition, SBS has included in its Code of Practice a lengthy and broad disclaimer that provides that the time zones for each classification are guides only to the most likely placement of programs and are not “hard and fast rules” (see Box 4).

BOX 4: SBS CODE OF PRACTICE – WATERED DOWN PROTECTIONS

4.10 Time zones

The time zones indicated for each classification are guides to the most likely placement of programs within that classification. The recommended placements are not hard and fast rules and there will be occasions when programs or segments of programs will appear in other time zones.

For example, an arts program or segment of an arts program classified M may appear during a weekend daytime schedule.

SBS should have sound reasons for any departure from the time zone for a program classification.

It is highly unlikely that the ACMA would ever register a Free TV Code with such a broad disclaimer as it would render the provisions largely unenforceable.

6.2 Transmission and spectrum costs

Taken together, ABC and SBS receive around \$254 million annually to meet the costs of the transmission and distribution services.¹⁸ This funding is delivered as a separate program

¹⁶ SBS Code of Practice 2014, Section 4.6, Pg. 4. Both Codes allow for M broadcast between the hours of noon and 3pm on school days.

¹⁷ Subsection 123(3A) of the Broadcasting Services Act 1992 applies only to industry groups representing commercial television broadcasting licensees and community television broadcasting licensees

¹⁸ ABC Program 1.2 2017/2018 Budget \$178.2m, SBS Program 1.2 2017/2018 Budget \$75.5m

(program 1.2) in the budget and is delivered on top of their general operational activities funding provided under program 1.1.

In addition, neither the ABC or SBS are required to pay for access to spectrum. This cost alone is \$40 million annually for commercial broadcasters.¹⁹

6.2.1 No contribution toward the cost of operating and maintaining RBAH sites

The ABC and SBS currently benefit from their signals being broadcast from approximately 75 sites that are operated and maintained by RBA Holdings Pty Ltd (RBAH). However, neither the ABC or the SBS make any contribution towards the costs of operating and maintaining these sites. This results in a significant subsidy from regional commercial broadcasters to the national broadcasters.

Based on the number of sites and the transmitter power costs, Free TV estimates that the contribution from the ABC and SBS should be in the order of \$1.2 million annually under standard industry maintenance terms.

6.3 Tax and disclosure requirements

Both the ABC and SBS legislation exempts the national broadcasters from paying taxation under any law of the Commonwealth, of a State or of a Territory. In contrast, the commercial broadcasters pay all applicable taxes, including corporate income tax.

In addition, ASX listed commercial broadcasters have strict Corporations Law and ASX Listing Rules continuous disclosure requirements to inform the market of anything that may have a materially effect on the price or value of the company’s securities. Again, ABC and SBS do not have these requirements. SBS has also recently declined to provide revenue data to ThinkTV—the industry body that publishes a six-monthly total TV revenue figure.

FIGURE 4: SUMMARY OF REGULATORY IMBALANCE

	Free TV members	SBS
Pays all relevant corporate Australian taxes	✓	✗ ²⁰
Pays for access to spectrum for broadcasting services	✓ ²¹	✗
Pays for transmission and distribution costs	✓	✗ ²²
55% of Australian content on the primary channel	✓ ²³	✗
1460 hours of Australian content on the multi-channels each year	✓ ²⁴	✗

¹⁹ The previous broadcast licence fee regime was replaced by a spectrum tax in 2017.

²⁰ SBS is exempt from all Commonwealth, State and Territory taxes (except FBT and GST). *Special Broadcasting Service Act 1991*, section 68

²¹ *Television Licence Fees Act 1964*

²² SBS has a specific budget allocation to fund its transmission and distribution services.

²³ At least 55% of content on the primary channel of a commercial free-to-air broadcaster must be Australian. This quota is exceeded every year by all commercial TV broadcasters. Section 121G(1) *Broadcasting Services Act 1992* (BSA)

²⁴ Each commercial television broadcaster must show 1460 hours of Australian content on its multi-channels per calendar year. Section 121G(2) BSA.

20 hours of first release documentary programs each year	✓ ²⁵	✗
860 points of first-release Australian drama programs broadcast over a set three-year period	✓ ²⁶	✗
Time zones on primary channel <ul style="list-style-type: none"> • G-only programming zones • M film content restricted until after 7.30 pm • MA15+ film content, restricted until after 9 pm 	✓ ²⁷	✗ ²⁸
Requirement to show material of local significance (such as news) in prescribed regional areas	✓ ²⁹	✗

6.4 Operational decisions and approach to risk management

A key competitive neutrality issue is the impact of the operational decisions and risk profile that SBS TV brings to the content acquisition market. We encourage the Panel to explore the non-financial terms discussed in this section that SBS can offer to successfully compete for commercial content.

6.4.1 Paying up-front for content

In standard content acquisition deals, the licence fee for the content is paid over the term of the licence. Given the carrying cost of the capital involved, it is not commercially practical for networks to offer advanced payment terms.

Free TV is concerned that our members may be losing out on commercial content if SBS is applying the practice of paying upfront for some content. Therefore, the Panel should explore the extent to which the low or zero levels of gearing and guaranteed access to capital enjoyed by SBS enable it to gain a competitive advantage from offering payment terms that cannot generally be matched by the commercial sector.

6.4.2 Buying off-script

The rights to content can be purchased “off-script”—meaning that only the script has been developed and the program is yet to go into production, but yet the purchaser still commits to buying the rights to the finished content.

This can be a cheaper method of buying content, so long as the purchaser has perfect foresight into the multitude of variables that can change during production. A high-quality script does not always translate to a high-quality TV series. When a purchaser buys off-script, they accept all of the risk associated with the production variables. If the production fails or does not translate as well as hoped from script to finished product, the purchaser carries the cost.

Given the margins that commercial broadcasters operate on, it is not a common business practice to buy off-script. However, SBS has confirmed in response to questions in Senate Estimates that it does purchase content off-script.³⁰ Again, this is a further example of the government owned risk profile distorting the operation of the competition content acquisition market.

²⁵ Part 9, *Broadcasting Services (Australian Content) Standard 2005*

²⁶ Part 6, *Broadcasting Services (Australian Content) Standard 2005*

²⁷ Commercial Television Industry Code of Practice 2018

²⁸ SBS Codes of Practice 2014 (updated March 2018)

²⁹ *Division 5D of Part 5 of the Broadcasting Services Act 1992*

³⁰ 24 October 2017, Environment and Communications Legislation Committee Hansard, pg 153.

6.4.3 Buying SVOD commercial play content for SBS On-Demand

For most broadcasters, their BVOD offerings are an extension of their broadcast schedule. This is also generally the case for ABC iView.

However, as discussed in section 4.1.2, SBS views itself as a free competitor to Netflix. Accordingly, its content acquisition strategy has extended beyond a catch-up service for charter aligned content and has entered into content acquisitions that would commonly be expected as part of an SVOD play.

It is unclear what SBS has as a long-term vision for SBS On-Demand. There is a risk for the competitive market that, through providing loss-leading content, SBS On Demand creates an unrealistic consumer expectation around the quality of content that can be sustainably made provided on a BVOD service. Further, it could distort further investment from other commercial businesses.

7 International comparison – BBC regulatory framework

During 2016, the UK Government undertook a review process for setting a new charter for the BBC. An independent review was commissioned by the Government to examine how the BBC is governed and regulated.

We draw from these learnings in proposing our own recommendations in section 8.

7.1 Ofcom BBC governance model

On 15 December 2016, a new BBC Royal charter for the period 2017-2027 was published by the UK Government. Under the charter and Agreement, Ofcom has been given regulatory responsibility for all areas of BBC content standards including, for the first time, the accuracy and impartiality of news, the impartiality of any program covering matters of political or industrial controversy and issues relating to current public policy.

Relevant to this inquiry is the new requirement for Ofcom to develop an 'Operating Framework' for the BBC, covering regulation of the BBC's performance, compliance with content standards and its impact on competition.

Ofcom's operating framework notes that:

Competition concerns may arise if the BBC's public service activities are considered to be crowding out competition or deterring others from investing or innovating. There is also a risk that without appropriate safeguards the BBC's public funding could be used to subsidise or benefit its commercial subsidiaries by offering services on favourable terms.

To address this concern, Ofcom's framework includes two competition review processes:

- **Competition reviews** (backwards looking) - will consider whether an existing BBC public service activity is having a significant adverse impact on fair and effective competition. This would include assessing whether the public value of the service justifies adverse impacts on fair and effective competition. The outcome of a competition review will be a determination that the BBC may continue with the activity, or that it may do so subject to appropriate modifications of conditions.
- **Competition assessments** (forward looking) - will examine whether any proposed changes to BBC public service activities and proposed new UK Public Services, which may have a significant impact on competition, are justified in light of the potential public value and impacts on fair and effective competition. In the first instance a review is undertaken by the BBC themselves as to whether a new service will have a material impact on fair and effective competition. Ofcom then reviews the BBC assessment and may decide to undertake a competition assessment. The BBC cannot implement its proposed change until this process is complete.³¹

7.1.1 Annual reporting by Ofcom

Ofcom will also report annually on how it has undertaken its regulatory activities of the BBC. As part of this annual report, Ofcom must include an assessment of the BBC's compliance with what the Charter and Agreement.

In addition to these annual reports, Ofcom must conduct at least two detailed reviews during the Charter period to 2027. Ofcom note that these more substantial reviews will:

"evaluate the extent to which the BBC is fulfilling its Mission and promoting each of the Public Purposes. They will also address any specific issues of concern identified by Ofcom, as well as any other areas central to the delivery of the BBC's Mission and Public Purposes."³²

³¹ Ofcom, Introduction to Ofcom's Operating Framework for the BBC, pg 12

³² Ibid pg. 8

7.1.2 Enforcement action available to Ofcom

The Ofcom operating framework sets out the enforcement options available to it under the new Charter. Where Ofcom forms a view that the BBC has not complied with a specified requirement, the regulator may:

- a) *direct the BBC, or accept undertakings from the BBC, to take such steps as Ofcom considers will:*
 - (i) *remedy the failure to comply;*
 - (ii) *ensure that the BBC complies with its requirements properly in future,*
- b) *serve on the BBC a notice requiring it to pay them, within a specified period, a specified financial penalty.*³³

³³ Ibid pg. 14

8 Recommendations

8.1 Address regulatory disparity

8.1.1 Provide greater flexibility in Australian content quotas

The current challenges faced by the entire Australian broadcast industry mean that there is an urgent need to reform the Australian content quota arrangements. While the ABC and SBS have the flexibility to respond and invest to meet changing audience demands, commercial networks are locked into an outdated regulatory regime.

To address this imbalance, the Panel should recommend that the Government urgently implement the changes recommended by Free TV to provide commercial networks the flexibility to remain relevant and competitive in the new media environment. The changes, included in our submission to the Australian and Children's Content review, were the minimum necessary to update the regulatory framework, while still operating within the bounds of the existing quota system. The changes include:

- **Updating the quota for Australian drama:** The drama quota must be made more flexible to allow broadcasters to meet the demands of the modern audience. The escalating production costs also need to be recognised by rewarding investment in higher budget shows with higher production values. The value of high-volume serials needs to also be more appropriately recognised as they form the bedrock of the production sector in terms of employment and training.
- **Remove the children's content quota:** The children's quotas should be abolished as children simply are not watching the high-quality, award winning shows that broadcasters invest millions in making available to them.
- **Address the first run Foxtel anomaly:** Allow networks to acquit Australian drama series or mini-series that have aired on subscription television in the same way that Australian feature films or telemovies currently operate.

8.1.2 Require ACMA registration of national broadcaster codes of practice

The ABC and SBS should be required to submit their Codes of Practice to the ACMA for registration. In turn, the ACMA should be required to only register a Code if they are satisfied:

- it provides appropriate community safeguards for the matters it covers;
- it is consistent with the rights, responsibility and obligations contained in the Commercial Television Industry Code of Practice and the code developed by the industry groups representing the providers of subscription television services; and
- members of the public were given adequate opportunity to comment.

This will ensure that ABC and SBS do not receive any commercial advantage stemming from the operation of disparate regulatory frameworks.

8.2 Introduce requirement to take account of the commercial sector

It is an anomaly that only the ABC Charter requires them to take account of the broadcasting services provided by the commercial sector of the Australian broadcasting system. This should be addressed by requiring SBS to take account of all services provided by the commercial sector, including across broadcast systems and digital media services.

In practice this should require that when the national broadcasters are making operational or investment decisions, they have to take account of the services that are already provided by the commercial sector.

In addition, as part of the new annual reporting framework recommended below, the national broadcasters should report to the ACMA annually on how they have taken account of the relevant services provided by the commercial sector. This would provide transparency to the decision-making processes of the national broadcasters, including what services they took account of, and how they saw their investment fitting into the competitive landscape in a way that was distinctive and consistent with their charters.

8.3 Introduce regulatory oversight by ACMA

Free TV proposes the introduction of a new regulatory framework that would greatly improve the transparency of the operation of the national broadcasters and how they take account of the services that are provided by the commercial sector.

The ACMA should assume responsibility for reviewing and reporting on the interaction between the competitive sector and the national broadcasters and the impact that this interaction has had on the delivery of the principal functions under the relevant charter. These would be called the ACMA competition and charter reviews, and could include for example directions on redress and/or parity payments by the ABC and SBS in respect of transmission costs at RBAH sites.

In framing this proposed model, we have been mindful to ensure that the editorial and operational independence of both our national broadcasters is maintained. To that end, we do not propose that the ACMA have the power to direct either the ABC or the SBS in the provision of their services to the community. Our model is premised on improving the transparency of the state of competition between the commercial sector and the national broadcasters.

Rather than treating the symptoms, this model directly addresses the cause of the competitive neutrality issues established in section 6 by requiring the ACMA to consider the delivery of charter functions alongside the interactions with the commercial sector. Our proposal would also provide a robust and dynamic evidence base upon which stakeholders and governments can make informed decisions on the need for further regulation of the activities of the national broadcasters.

8.3.1 ACMA to consult on its proposed approach to conducting review

Under our proposed model, the ACMA would be required to set out and consult on its proposed approach to performing its regulatory functions regarding the national broadcasters' competitive impact and charter compliance. This will provide all stakeholders, including national broadcasters, clarity on how ACMA will undertake the review process.

There should be a provision for the Minister to set out any other matters that the ACMA should consider in its review. This would enable the government to respond to emerging issues or matters that have been raised in previous review processes that the government considers should become a focus for further analysis.

8.3.2 Annual reporting and requirement to take account of ACMA reviews

The ACMA would be required to report annually on the performance of national broadcasters in regard to:

- taking account of the services provided by the commercial sector;
- meeting their charter obligations; and
- any other matter set out by the Minister.

In turn, the national broadcasters would be required in their annual reports to specifically address how they took account of the commercial sector in their operations and investment decisions in the preceding 12-month period. Further, the annual reports must set out how the national broadcasters plan to take account of the findings of the most recent ACMA competition and charter review.

















8.4 Address funding uncertainty





















As part of the package of measures to address the competitive neutrality issues highlighted in this submission, consideration should also be given to addressing the incentive on SBS TV to maximise commercial returns. Part of this incentive is driven by uncertainty around future funding and their ability to plan beyond the end of the current triennial funding period.

In a first best world, SBS would deliver on its distinctive principal function and be entirely taxpayer funded. We note that this would address the significant concerns held by SBS stakeholders in regard to the extent of advertising on SBS and the placement of advertising within programming.

However, we also recognise that current budgetary pressures may not allow SBS to return to a 100 per cent government funded model. Nevertheless, extending the current triennial funding model as part of a package of measures to require adherence to charter aligned activities, would serve to address some of the incentive to pursue commercial content at the expense of charter aligned programming.

A1. SBS VICELAND commercial content not aligned with charter obligations

Title	Dr Green assessment	Original broadcast	Now available on
The Fifth Element	A science fiction movie, starring Bruce Willis and while entertaining, does not appear to align with the principal function of the SBS.		NETFLIX
The Day the Earth Stood Still	A vintage US space thriller that has recently been remade. The content is difficult to align with SBS principal function.		
Pulp Fiction	This 1994 Quentin Tarantino classic appears outside the SBS's principal function to entertain reflecting Australia's multicultural society.		 NETFLIX
Stargate	The Stargate Team rescues a young girl only to find she is a bomb threatening the whole planet. Vintage sci-fi entertainment but appears outside the SBS's principal function.		
Alien Resurrection	A science fiction great that has strong entertainment values but appears not to be aligned with the SBS's principal function of reflecting Australia's multicultural society.		
Monty Python's Meaning of Life	Vintage UK comedy and satire but does not appear aligned with SBS's principal function.		
Robocop	A classic film dramatizing police brutality and the role of corporate power. Strong entertainment but it is difficult to see as aligned with the principal function of SBS.		
Hugo	Martin Scorsese's film about an orphan boy living in a Paris train station. Highly acclaimed but appears not aligned with SBS's principal function.		
Bill and Ted's Excellent Adventure	A 1989 US comedy about two indolent students approaching their history lessons by going back through time. Strong entertainment value but difficult to see as fulfilling SBS principal function.		NETFLIX
Aliens	Part of the Alien series. See comment in for Alien Resurrection.		
Kill Bill Vol 1	Another classic from Quentin Tarantino, which is a fantasy about a bride waking from her four-year coma. Does not appear aligned with SBS principal function.		 NETFLIX
Death Proof	Also from Quentin Tarantino. A stunt man stalks his victims in a death proof car. Difficult to see as meeting expectations of the SBS principal function.		

Big Trouble in Little China	While having origins cult classics, it is difficult to see how these films relate to SBS's principal function.		
The Iceman	A US crime film about a true story hit-man Richard Kuklinski. Strong entertainment value but does not easily align with the principal function of the SBS.		
Scarface	While having origins cult classics, it is difficult to see how these films relate to SBS's principal function.		
Ronin	An action adventure US film about the activities of a team of former intelligence agents starring Robert De Niro. Hard to see as aligned with the principal function of SBS.		
Three Kings	George Clooney stars in this film about a group of US soldiers in pursuit of hidden gold at the end of the Gulf War. Not apparent as being consistent with the principal function of SBS.		
Soylent Green	A 1973 US science fiction film starring Charlton Heston as Thorn a detective in the New York Police Force in 2022. Does not appear to align with the SBS's principal function.		
Gadget Man	A UK documentary series with informative content about living modern life. However, has no context about reflecting Australia's multicultural society.		
Brooklyn Nine Nine	A US police comedy series from Fox then NBC. Well made television but the content does not appear to fit within the principal function of SBS to inform and entertain reflecting Australia's multicultural society.		
The Blue Lagoon	A 1980 US romance and adventure film starring Brooke Shields. While this is vintage cinema it is hard to align with SBS's principal function.		
Killer Joe	A 2011 US black comedy film about a victim in debt to drug lord who hires a hit-man to kill his mother in order to redeem an insurance policy. Difficult to conclude that this film fits within SBS's principal function.		
Taxi Driver	Martin Scorsese's film about an ex-marine who works the night shift as a taxi driver in the 1970's. Entertaining but does not appear aligned with SBS principal function.		
The Brothers Grimm	This classic fantasy film produced in the US is most entertaining, however, it is difficult to align with the principal function of SBS.		
Apocalypto	Mel Gibson's film about the Mayan kingdom and its drastic efforts to resist demise. Hard to see how it aligns with SBS's primary function.		
The Adventures of Tintin	Steven Spielberg's work, with Peter Jackson, is a great testimony to motion capture movie making. However, it is not clear how it fits in within the principal function of SBS.		
2001 Space Odyssey	Another vintage film but hard to see how it aligns with SBS's principal function.		
Get Shorty	John Travolta plays a mafia operator on the way to Hollywood in this classic film. Good entertainment but hard to see as aligned to SBS's principal function.		

THE PRINCIPAL FUNCTION OF SBS

For the Free TV Australia submission to the Inquiry into the Competitive
Neutrality of the National Broadcasters

Murray Green

The Special Broadcasting Service Corporation (SBS) is a statutory agency with its reason for being and public purpose outlined in the *Special Broadcasting Service Act 1991* (Cth). SBS has a particular role in Australia's media ecology. Its enabling legislation gives the Corporation particular functions and powers.

The Principal Function Test

The principal function of the SBS is 'to provide multilingual and multicultural radio, television and digital services'. The purpose of these services has two expected and related outcomes. First, 'to inform, educate and entertain all Australians' and second, 'in doing so, reflect Australia's multicultural society' (s6 (1)). There is a direct and focussed link between the obligation to inform, educate and entertain and the obligation to reflect Australia's multicultural society.

The performance of this principal function is outlined in eight sub-sections (s6 (2) (a)-(h)). The SBS is to contribute to meeting the communication needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities as well as increase awareness of the contribution of a diversity of cultures to Australian society.

The SBS, in performing the principal functions, must promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people as well as contribute to the retention and development of language and other cultural skills.

As far as is practicable the obligation to inform, educate and entertain Australians should be in their preferred languages. Australia's diverse creative resources should be used to produce content, which should contribute to the overall diversity of Australia's radio and television services (taking into account the services of the ABC and community broadcasters).

The SBS, to the extent possible on radio and television, is to reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression.

These requirements of Section 6 (1) and (2) constitute the SBS Charter (s 6 (3)), the Corporation's instrument of empowerment and statement of public purpose. The role of the SBS Board is to decide the objectives, strategies and policies to be followed in performing its functions (s 9 (a)).

It is clear that some of the SBS functions can be achieved on different platforms but a principal function of the Corporation is to 'reflect Australia's multicultural society' (s 6 (1)). This requirement applies to all SBS content and this purpose is fundamental to the Charter of SBS.

Appraising television content and its alignment with the SBS Charter is the objective of this overview. How does SBS television content align with its Charter obligations?

The Principal Function Test and SBS Television Content

The approach of this assessment has been to take the top 50 programs, by 5 capital city audience, on SBS Television, SBS Viceland, and SBS Food Network for 2017. This data is provided by Free TV, through their contract with OzTAM. The reason why the Top 50 programs are used in this evaluative measure is that it is in the competition for audience, issues of competitive neutrality are explicit. The aggregation of audiences attracts advertisers.

This content on SBS, SBS Viceland, and the SBS Food Network is assessed against alignment with the principal function of the SBS: to provide multi-lingual and multicultural services that inform, educate and entertain all Australians, reflecting Australia's multicultural society.

The methodology included establishing a program's country of origin, reviewing the program's synopsis as published by SBS online, and where there appeared ambiguity, reviewing the program on SBS On Demand, if it was available. This work was undertaken during May and June 2018.

These following observations are indicative and suggestive rather than being presented as settled and definitive. What is significant is evidence of tendency and trends that are relevant to the question: is SBS going beyond its legislated purpose?

Table 1

SBS TELEVISION 2017**Top 50 Programs by Audience**

Rank	Program	Aligned Yes	Aligned No
1	2017 Eurovision Song Contest	Yes	
2	Filthy Rich and Homeless	Yes	
3	Prince Philip: The Plot to Make a King	Yes	
4	Filthy Rich and Homeless Live	Yes	
5	Great Continental Railway Journeys		No
6	Princess Diana's Wicked Stepmother	Yes	
7	President Trump	Yes	
8	Italy's Invisible Cities		No
9	Great Continental Railway Journeys		No
10	Titanic: the new evidence		No
11	Great Wall of China: The Hidden Story		No
12	Eurovision Song Contest (Semi-final)	Yes	
13	Going Clear: Scientology		No
14	Great American Railroad Journeys		No
15	The Night Manager		No
16	Diana v Elizabeth	Yes	
17	The Queen's Mother in Law	Yes	
18	Struggle Street	Yes	
19	That Sugar Film	Yes	
20	The Secret Life of Queen Victoria	Yes	
21	Royal Cousins at War	Yes	
22	Eurovision Song Contest Final Repeat	Yes	
23	Dunkirk: the new evidence		No
24	Secrets of our Cities	Yes	
25	Michael Mosley: Queen Victoria's Slum		No
26	Diana in Her Own Words	Yes	
27	Shaun Micallef Stairway to Heaven	Yes	
28	Great American Railway Journeys		No
29	The Silk Road		No
30	Wallis: the Queen That Never Was	Yes	
31	The Obesity Myth	Yes	
32	Secrets of the Long Haul Flight	Yes	

Rank	Program	Aligned Yes	Aligned No
33	Real Vikings		No
34	Birth of an Empire: The East India Company	Yes	
35	The Great Pyramid: New Evidence		No
36	Spying on the Royals	Yes	
37	The Good Fight		No
38	Britain's Pompeii		No
39	Gourmet Farmer	Yes	
40	Secret's of China's Forbidden City		No
41	Scotland: Rome's Final Frontier		No
42	Extreme Railway Journeys		No
43	Alcatraz: Escaping the Rock		No
44	Rome's Invisible City		No
45	Vikings		No
46	Clean Eating: the Dirty Truth		No
47	Michael Mosley: Trust Me I'm a Doctor		No
48	Meet the Trumps	Yes	
49	Ancient Egypt's Lost City		No
50	Extreme Railway Journeys		No

Suggested SBS Television Programs Not Aligned with SBS Principal Function

Great Continental Railway Journeys (5)

A UK produced series on epic rail journeys across Europe. While most informative, not directly aligned with SBS principal function to reflect Australia's multicultural *society*.

Italy's Invisible Cities (8)

This UK series uses up to date technology to go beyond conventional archaeology to discover hidden remains. Informative and educative but not related to SBS principal function.

Titanic: The New Evidence (10)

While informative, this UK documentary does not appear to contribute to an awareness of Australia's multicultural society.

Great Wall of China: the Hidden Story (11)

This UK documentary examines the structure of the Great Wall. Informative but not aligned with SBS principal function.

Going Clear: Scientology and the Prison of Belief (13)

Written, directed and narrated by Academy Award winner, Alex Gibney. Informative HBO documentary but difficult to see as aligned with SBS's multicultural purpose.

Great American Railroad Journeys (14)

Former UK politician Michael Portillo gives his perspective on these US rail adventures. Appears not aligned to SBS principal function.

The Night Manager (15)

The US produced drama based on the work of John LeCarre, and set in the Arab Spring, does not appear aligned to the SBS principal function of contributing to an awareness of Australia's multicultural society.

Dunkirk: The new evidence (23)

This UK documentary is most informative and produces fresh perspectives on this pivotal military campaign. However, it is hard to see as being aligned with SBS's principal function.

Michael Mosley: Queen Victoria's Slum (25)

An innovative series from the UK that seeks to re-imagine living in London's nineteenth century slum conditions. However, it is difficult to see alignment with the SBS principal function of reflecting Australia's multicultural society.

The Silk Road (29)

This BBC documentary series is most informative but it is difficult to see as being related to the principal function of the SBS, to reflect Australia's multicultural society.

Real Vikings (33)

This US documentary series explores the origins of the Vikings. Informative but hard to see as related to SBS's principal function: informing, educating and entertaining in order to reflect Australia's multicultural society.

The Great Pyramid: New Evidence (35)

This Channel 4 (UK) program revisits how the Great Pyramid of Egypt was constructed. Most informative but suggest not aligned with SBS principal function of reflecting Australia's multicultural society.

The Good Fight (37)

A US drama series based around a Chicago law firm dealing with matters of terrorism, cyber-bullying, censorship, hate speech and fake news. It is hard to align this content with SBS principal function of entertaining and informing to reflect Australia's multicultural society.

*Britain's Pompeii (38)**Secrets of China's Forbidden City (40)**Scotland: Rome's Final Frontier (41)**Extreme Railway Journeys (42) [Includes one episode on the Australian Ghan]**Alcatraz: Escaping the Rock (43)**Rome's Invisible City (44)**Vikings (45) [Scripted drama]**Ancient Egypt's Lost City (49)*

These overseas produced programs are both educative and informative but do not educate and inform with the objective of reflecting Australia's multicultural society, the principal function of SBS.

Clean Eating: The Dirty Truth (46)

An informative UK documentary but lacks a context of Australia's multicultural society.

Michael Mosley: Trust Me I'm a Doctor (47)

This UK documentary series is both educative and informative but lacks a context of reflecting Australia's multicultural society.

Updates

[The Gourmet Farmer (39) series is assessed as 'Yes: Aligned' - not as previously published indicating 'not aligned']

[Commentary has been added to Going Clear: Scientology and the Prison of Belief (13) and The Great Pyramid: New Evidence (35)]

[Note added to Extreme Railway Journeys (42) indicating one episode includes the Adelaide to Darwin (Ghan) line]

[Note added to Vikings (45) that it is a scripted drama]

Table 2

SBS VICELAND 2017

Top 50 Programs by Audience

Rank	Program	Aligned Yes	Aligned No
1	A League Grand Final	Yes	
2	Arsenal v Sydney	Yes	
3	The Fifth Element		No
4	The Day the Earth Stood Still		No
5	Pulp Fiction		No
6	Arsenal v Western Sydney Wanderers	Yes	
7	Travel Man Christmas Special	Yes	
8	A League Grand Final Post Match	Yes	
9	Stargate		No
10	A League Grand Final Pre Match	Yes	
11	Bone Tomahawk		No
12	Alien Resurrection		No
13	White Men Can't Jump	Yes	
14	Monty Python's Meaning of Life		No
15	Arsenal v Sydney Post Match	Yes	
16	Robocop		No
17	Hugo		No
18	That Sugar Film	Yes	
19	Bill and Ted's Excellent Adventure		No
20	Arsenal v Sydney Pre-Match	Yes	
21	Women's Football: Matilda's v China	Yes	
22	Aliens		No
23	The Science Behind Sex	Yes	

Rank	Program	Aligned Yes	Aligned No
24	A League Semi Final	Yes	
25	Raw Comedy Festival	Yes	
26	Kill Bill Vol 1		No
27	Death Proof		No
28	Big Trouble in Little China		No
29	The Iceman		No
30	Scarface		No
31	Event Horizon	Yes	
32	Ronin		No
33	Three Kings		No
34	Crouching Tiger Hidden Dragon	Yes	
35	Soylent Green		No
36	Sex Made in Germany	Yes	
37	Romper Stomper	Yes	
38	Gadget Man		No
39	Brooklyn Nine Nine		No
40	The Blue Lagoon		No
41	Mythbusters Top 25 Special	Yes	
42	Killer Joe		No
43	Taxi Driver		No
44	The Brothers Grimm		No
45	Apocalypto		No
46	Naked: Diary from Porn Valley	Yes	
47	A League Elimination Final	Yes	
48	The Adventures of Tintin		No
49	2001 Space Odyssey		No
50	Get Shorty		No

Suggested SBS Viceland Programs Not Aligned with SBS Principal Function

The Fifth Element (3)

A science fiction movie, starring Bruce Willis and while entertaining, does not appear to align with the principal function of the SBS.

The Day the Earth Stood Still (4)

A vintage US space thriller that has recently been remade. The content is difficult to align with SBS principal function.

Pulp Fiction (5)

This 1994 Quentin Tarantino classic appears outside the SBS's principal function to entertain reflecting Australia's multicultural society.

Stargate (9)

The Stargate Team rescues a young girl only to find she is a bomb threatening the whole planet. Vintage sci-fi entertainment but appears outside the SBS's principal function.

Bone Tomahawk (11)

A 2015 American Western starring Kurt Russell and Matthew Fox. Difficult to see how aligned to the SBS's principal function.

Alien Resurrection (12)

A science fiction great that has strong entertainment values but appears not to be aligned with the SBS's principal function of reflecting Australia's multicultural society.

Monty Python's Meaning of Life (14)

Vintage UK comedy and satire but does not appear aligned with SBS's principal function.

Robocop (16)

A classic film dramatizing police brutality and the role of corporate power. Strong entertainment but it is difficult to see as aligned with the principal function of SBS.

Hugo (17)

Martin Scorsese's film about an orphan boy living in a Paris train station. Highly acclaimed but appears not aligned with SBS's principal function.

Bill and Ted's Excellent Adventure (19)

A 1989 US comedy about two indolent students approaching their history lessons by going back through time. Strong entertainment value but difficult to see as fulfilling SBS principal function.

Aliens (22)

Part of the Alien series. See comment in (12).

Kill Bill Vol 1 (26)

Another classic from Quentin Tarantino, which is a fantasy about a bride waking from her four-year coma. Does not appear aligned with SBS principal function.

Death Proof (27)

Also from Quentin Tarantino. A stunt man stalks his victims in a death proof car. Difficult to see as meeting expectations of the SBS principal function.

*Big Trouble in Little China (28)**Scarface (30)*

While cult classics, it is difficult to see how these films relate to SBS's principal function.

The Iceman (29)

A US crime film about a true story hit-man Richard Kuklinski. Strong entertainment value but does not easily align with the principal function of the SBS.

Ronin (32)

An action adventure US film about the activities of a team of former intelligence agents starring Robert De Niro. Hard to see as aligned with the principal function of SBS.

Three Kings (33)

George Clooney stars in this film about a group of US soldiers in pursuit of hidden gold at the end of the Gulf War. Not apparent as being consistent with the principal function of SBS.

Soylent Green (35)

A 1973 US science fiction film starring Charlton Heston as Thorn, a detective in the New York Police Force in 2022. Does not appear to align with the SBS's principal function.

Gadget Man (38)

A UK documentary series with informative content about living modern life. However, has no context about reflecting Australia's multicultural society.

Brooklyn Nine-Nine (39)

A US police comedy series from Fox then NBC. Well made television but the content does not appear to fit within the principal function of SBS to inform and entertain reflecting Australia's multicultural society.

Blue Lagoon (40)

A 1980 US romance and adventure film starring Brooke Shields. While this is vintage cinema it is hard to align with SBS's principal function.

Killer Joe (42)

A 2011 US black comedy film about a victim in debt to drug lord who hires a hit-man to kill his mother in order to redeem an insurance policy. Difficult to conclude that this film fits within SBS's principal function.

Taxi Driver (43)

Martin Scorsese's film about an ex-marine who works the night shift as a taxi driver in the 1970's. Entertaining but does not appear aligned with SBS principal function.

The Brothers Grimm (44)

This classic fantasy film produced in the US is most entertaining, however, it is difficult to align with the principal function of SBS.

Apocalypto (45)

Mel Gibson's film about the Mayan kingdom and its drastic efforts to resist demise. Hard to see how it aligns with SBS's primary function.

The Adventures of Tintin (48)

Steven Speilberg's work, with Peter Jackson, is a great testimony to motion capture movie making. However, it is not clear how it fits in within the principal function of SBS.

2001 Space Odyssey (49)

Another vintage film but hard to see how it aligns with SBS's principal function.

Get Shorty (50)

John Travolta plays a mafia operator on the way to Hollywood in this classic film. Good entertainment but hard to see as aligned to SBS's principal function.

Update

[*Comment and assessment of Bone Tomahawk (11) added*]

Table 3

SBS FOOD NETWORK**Top 50 Programs by Audience 2017**

Rank	Program	Aligned	
		Yes	No
1	Rick Stein's Mediterranean Escapes		No
2	Secret Eats: Arctic Circle		No
3	Luke Nguyen's France	Yes	
4	Man v Food		No
5	Destination Flavour Down Under	Yes	
6	Secret Eats: Arctic Circle		No
7	Restaurant Impossible		No
8	Rick Stein's Mediterranean Escapes		No
9	Rick Stein's Spain		No
10	Rick Stein's French Odyssey		No
11	Andrew Zimmern's Bucket List		No
12	Luke Nguyen's Vietnam	Yes	
13	Rick Stein's French Odyssey		No
14	Destination Flavour Singapore	Yes	

Rank	Program	Aligned	
		Yes	No
15	Italy Unpacked		No
16	Secret Eats: Arctic Circle		No
17	Cake Masters		No
18	Underground BBQ Challenge		No
19	Secret Eats		No
20	My Sri Lanka with Peter Kuruvita	Yes	
21	Restaurant Impossible		No
22	Ching's Amazing Asia		No
23	Mystery Diners		No
24	Anthony Bourdain: No Reservations		No
25	Lyndey Milan Taste of Australia	Yes	
26	All Star Holiday Special		No
27	Restaurant Impossible		No
28	My Sri Lanka with Peter Kuruvita	Yes	
29	Secret Eats		No
30	Best of My Sri Lanka with Peter Kuruvita	Yes	
31	Mystery Diners		No
32	Cake Masters		No
33	Born to Cook: Jack Stein Down Under	Yes	
34	Mystery Diners		No
35	Shane Delia's Spice Journey	Yes	
36	Andy and Ben Eat Australia	Yes	
37	Mystery Diners		No
38	Ching's Amazing Asia		No
39	Destination Flavour Japan	Yes	
40	Man v Food		No
41	Poh and Co	Yes	
42	Born to Cook: Jack Stein Down Under	Yes	
43	The Great Food Truck Race		No
44	Man v Food		No
45	Drive Through Australia	Yes	
46	Bizarre Foods with Andrew Zimmern		No
47	Luke Nguyen's Vietnam	Yes	
48	Diners. Drive-Ins and Dives		No
49	Restaurant: Impossible		No
50	Born to Cook: Jack Stein Down Under	Yes	

Suggested SBS Food Network Programs Not Aligned with SBS Principal Function

Rick Stein's Mediterranean Escapes (1)

A UK produced series that has a wide range of perspectives on food origins, for example, pasta. Informative but lacks any direct linkage to reflecting Australian multicultural society.

Secret Eats with Adam Richman: Arctic Circle (2)

This program, and other *Secret Eats* episodes in the Food Network Top 50, is part of a US produced series that reveals food delicacies not commonly known. Entertaining but not directly aligned with SBS principal function of reflecting Australia's multicultural society.

Man v Food (4)

A series that explores the challenge of consumption on a grand scale. Produced in the US and while entertaining does not appear to be aligned to the SBS principal function of reflecting Australia's multicultural society.

Restaurant Impossible (7)

A US produced series exploring restaurants established in difficult or unlikely places. Does not appear aligned to SBS principal function.

Rick Stein's Spain (9)

Most informative UK series about the Spanish origins of many foods but does not appear linked to SBS principal function of reflecting Australia's multicultural society.

Rick Stein's French Odyssey (10)

This UK series is both informative and entertaining but lacks alignment with the SBS principal function of reflecting Australia's multicultural society.

Andrew Zimmern's Bucket List (11)

A US series where the host explores favourite culinary locations. No apparent alignment with SBS principal function of reflecting Australia's multicultural society.

Italy Unpacked (15)

An art historian and a chef explore the culture and food of Italy. Informative but does not appear aligned with SBS principal function of reflecting Australia's multicultural society.

Cake Masters (17)

A US series that explores what is possible in the presentation and decoration of cakes. Does not appear aligned with SBS principal function.

Underground BBQ Challenge (18)

An entertaining US series but appears not connected with SBS principal function of reflecting Australia's multicultural society.

Ching's Amazing Asia (22)

British food writer and television chef explores Asian cuisine in this Singapore based produced series. Informative but does not appear linked with SBS's principal function to reflect Australia's multicultural society.

Mystery Diners (23)

Undercover restaurant intelligence makes this US series good entertainment. However, it is not apparent in fulfilling SBS's primary function.

Anthony Bourdain: No Reservation (24)

This international chef travels the world to discover new dining experiences. Entertaining but does not appear aligned with the principal function of SBS.

All Star Holiday Special (26)

Seven food personalities feature in this US produced program celebrating being at home for the holidays. Appears to lack alignment with the SBS principal purpose of reflecting Australia's multicultural society.

The Great Food Truck Race (43)

A US produced series that is entertaining and informative in relation to the food truck industry. However, no apparent linkage with SBS principal function.

Bizarre Foods with Andrew Zimmern (46)

A US exploration of historic locations that are associated with a particular cuisine. No apparent alignment with the principal function of the SBS, to educate, inform and entertain in order to reflect Australia's multicultural society.

Diners, Drive-Ins and Dives (48)

A US produced series that crosses the country visiting distinctive and stand-out food experiences good and bad. Not aligned with SBS 's principal function.

Update

[The Flavour Destination Japan (39) is assessed as 'Yes: Aligned' - not as previously published indicating 'not aligned']

Conclusion

This overview suggests that channel SBS, in its Top 50 2017 by audience, has some 52% of its programming not aligned with the Corporation's principal function: to broadcast programs that are multilingual and multicultural, that educate, inform and entertain and, doing so, reflect Australia's multicultural society. When appraising the Top 50 programs on SBS Viceland in 2017, this percentage of content not aligned with the SBS principal function is around 58%. This percentage increases further with the SBS Food Network (2017 Top 50 programs) where 66% of the programs appeared not aligned with the SBS principal function.

Of the national broadcasters, the function and purpose of SBS is more particular and therefore more constrained. There is a synergy of purpose in contrasting the SBS and ABC Charters. While the ABC in its functions has an obligation to broadcast programs that contribute to a sense of national identity and inform and entertain and reflect the cultural diversity of the Australian community (*Australian Broadcasting Corporation Act 1983* (Cth) s 6(1)(a)(i)), it also is empowered to broadcast programs of an educational nature (s6(1)(a)(ii)). The principal function of the SBS is arguably more focussed. While having an obligation to inform, educate and entertain, SBS content is to reflect Australia's multicultural society (SBS Act 1991, s6(1)).

The trends and tendencies evident in this analysis suggest a significant portion of SBS content is not aligned with this purpose.

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